

**HOUSE BILL NO. 6**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES OLSON, Peggy Wilson, Kerttula, Kreiss-Tomkins, Muñoz

Introduced: 1/16/13

Referred: Labor and Commerce, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act establishing procedures and guidelines for auditing pharmacy records; and  
2 providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 INTENT. This Act is intended to establish standards for an audit of pharmacy records  
7 carried out by an insurer, a managed care company, a hospital or medical service corporation,  
8 a third-party payor, a pharmacy benefits manager, or an entity that represents an insurer, a  
9 managed care company, a hospital or medical service corporation, a third-party payor, or a  
10 pharmacy benefits manager.

11 \* **Sec. 2.** AS 08.80 is amended by adding a new section to read:

12 **Sec. 08.80.477. Pharmacy audits.** (a) When an audit of the records of a  
13 pharmacy licensed in this state is conducted by an insurer, managed care company,  
14 hospital or medical service corporation, third-party payor, or pharmacy benefits

1 manager,

2 (1) for each audit cycle, the auditor shall provide the pharmacy or  
3 pharmacist with notice of the audit at least two weeks before conducting the initial on-  
4 site audit;

5 (2) unless the pharmacy and the auditor agree otherwise, the audit may  
6 not be scheduled to occur during the first seven business days of a month because of  
7 the high volume of prescriptions that are filled during that time;

8 (3) the insurer, managed care company, hospital or medical service  
9 corporation, third-party payor, or pharmacy benefits manager may not conduct the  
10 audit within 90 days after an audit in which no errors were found; in this paragraph,  
11 "error" does not mean a clerical error, record-keeping error, or typographical error,  
12 unless the auditor reasonably determines that the error was intentional or the auditor  
13 identifies a pattern of errors;

14 (4) the audit of a claim must occur within two years after the date the  
15 claim was submitted;

16 (5) if the audit involves clinical or professional judgment, the audit  
17 shall be conducted by or in consultation with a pharmacist licensed in this or another  
18 state;

19 (6) the auditor shall audit the pharmacy using the same standards and  
20 parameters used in audits of other similarly situated pharmacies;

21 (7) the auditor may not use the accounting practice of extrapolation to  
22 establish an overpayment or underpayment or for calculating recoupment or penalties;

23 (8) a finding by the auditor of overpayment or underpayment shall be  
24 based on an actual overpayment or underpayment and may not be based on a  
25 projection based on the number of patients served who have a similar diagnosis or on  
26 the number of similar orders or refills for similar drugs;

27 (9) calculation by the auditor of an overpayment may not include  
28 dispensing fees for a prescription that was dispensed to the patient, if any portion of  
29 the claim and associated dispensing fee is payable by the insurer, managed care  
30 company, hospital or medical service corporation, third-party payor, or pharmacy  
31 benefits manager under the terms of the contract and if the claim is not fraudulent;

1 (10) the auditor may not assess a charge-back, recoupment, or other  
2 penalty against a pharmacy solely because a prescription is mailed or delivered at the  
3 request of a patient as part of a routine business practice of the pharmacy;

4 (11) to the extent the audit finds clerical or record-keeping errors in a  
5 required document or record, the pharmacy may not be subject to recoupment unless  
6 the clerical or record-keeping error results in actual financial harm to the insurer, the  
7 managed care company, the hospital or medical service corporation, the third-party  
8 payor, the pharmacy benefits manager, or a customer;

9 (12) the auditor shall deliver the preliminary audit report to the  
10 pharmacy within 120 days after the completion of the audit;

11 (13) interest may not accrue from the date of completion of the audit to  
12 the delivery date of the preliminary audit report, unless the auditor finds proof of  
13 intent to commit fraud;

14 (14) for at least 30 days following receipt of the preliminary audit  
15 report, the pharmacy shall be allowed to produce documentation to address a  
16 discrepancy found during the audit; the pharmacy may use any record, including a  
17 record of a hospital, physician, or other health care provider, or other written or  
18 electronic record to validate a pharmacy record;

19 (15) the insurer, managed care company, hospital or medical service  
20 corporation, third-party payor, or pharmacy benefits manager shall establish a written  
21 appeal process through which the pharmacy may appeal an unfavorable preliminary or  
22 final audit report;

23 (16) the auditor shall deliver the final audit report to the pharmacy  
24 within 90 days after receipt of the preliminary audit report or final appeal;

25 (17) the auditor may not receive compensation based on the percentage  
26 of the amount recovered by the auditor;

27 (18) the auditor shall provide a copy of the final report to the health  
28 benefit plan sponsor affected by the audit;

29 (19) patient information accessed in the course of the audit shall be  
30 kept confidential and may not be used for marketing purposes.

31 (b) This section does not apply to

- 1                   (1) a criminal investigation; or  
2                   (2) an investigation or audit by a governmental agency, including an  
3 investigation or audit by a governmental agency administering a state Medicaid  
4 program.

5                   (c) In this section, "health benefit plan" has the meaning given in  
6 AS 21.54.500.

7       \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
8 read:

9                   **APPLICABILITY.** This Act applies to pharmacy audits conducted on or after the  
10 effective date of this Act.

11       \* **Sec. 4.** This Act takes effect January 1, 2014.